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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,688	04/14/2004	Christopher J. Sewall	60382USA	8069

7590 06/04/2008
Paul A. Fair
Patent Administrator
FMC Corporation
1735 Market Street
Philadelphia, PA 19103

EXAMINER

WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
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1623

MAIL DATE	DELIVERY MODE
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06/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/824,688	Applicant(s) SEWALL ET AL.	
	Examiner EVERETT WHITE	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 29-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The response to the restriction requirement filed March 10, 2008 has been received, entered and carefully considered.

Answer To Arguments With Traverse

2. Applicant's election with traverse of Group I, Claims 1-28, and kappa-2 carrageenan as the elected species in the reply filed on March 10, 2008 is acknowledged. The traversal is on the ground(s) that it would not be a serious burden on the examiner to examine Claims 1-45 in the present application since the claims have already been examined in previous Office actions. This is not found persuasive because the claims of the instant application recite 6 different inventions and a search of each invention is indeed a serious burden for the examiner since a rejection of one of the inventions cannot be used to reject the other inventions.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 1-45 are pending in the case. Claims 29-45 are withdrawn from consideration as being directed to non-elected inventions.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

New Grounds of Rejection

5. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonsson et al (US Patent No. 6,967,037, newly cited) in view of Guiseley (US Patent No. 4,443,486, already of record).

Applicants claim a homogeneous, thermoreversible gel comprising carrageenan wherein said carrageenan has a viscosity of 5 to less than 10 cP at 75 °C when measured in a 0.10 molar aqueous sodium chloride solution containing 1.5% by weight of said carrageenan based on the weight of all components in said solution, and optionally at least one of a plasticizer, a second film former, a bulking agent, and a pH controlling agent, wherein said gel has a solids content of at least 40% and said

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carrageenan is present in an amount of at least 70% of all carrageenan present in said gel.

The Jonsson et al patent discloses a food composition in the form of a gel, comprising soluble solids in the range of about 50% to about 90% by weight, a carrageenan component in an amount sufficient to form a gel, and water to balance (see abstract). The carrageenan component of the Jonsson et al patent may be an iota carrageenan or a kappa carrageenan or mixtures thereof, preferably in an amount of about 0.25 to 10.0% by weight (see column 6, lines 31-33). The carrageenan and amount of solids disclosed in the Jonsson et al patent embraces the carrageenan and solids content recited in instant Claims 1-5 and 15-21. The Jonsson et al also discloses a sweetening component in the composition, which may be selected as a sugar alcohol, which include sorbitol, lactitol, and maltitol (see column 6, 2nd paragraph). The Jonsson et al patent discloses that the composition may comprise additional hydrocolloids selected from a group that include pectin, celluloses, alginates and gellan (see column 6, 9th paragraph). The Jonsson et al patent further discloses the composition comprising bulking agents such as polydextrose. The sugar alcohols, hydrocolloids, and bulking agents of the Jonsson et al patent embraces the plasticizers, second film formers recited in instant Claims 8 and 24-26. The food composition of the Jonsson et al patent further embraces the edible product of instant Claim 28.

The instantly claimed gel differ from the gelled food composition of the Jonsson et al patent by claiming that the viscosity of the carrageenan is 5 to less than 10 cP, which is not disclosed in the Jonsson et al patent.

However, the Guiseley patent, which discloses the present of carrageenan in milk products, shows carrageenan having the instantly claimed viscosity measurement is known in the art. Guiseley discloses preparation of a *Eucheuma cottonii* carrageenan extract that involve the extract undergoing hydrolysis which decreases the viscosity of a 1.5% water solution of the extract at 75°C to within the range of from about 5 to 20 mPa.s (see column 6, 3rd paragraph), which covers the viscosity measurement of the carrageenan recited in instant Claim 1. The Guiseley patent also discloses enhancement of the *Eucheuma cottonii* carrageenan being accomplished by treatment

of the extract in the presence of calcium, sodium, potassium and magnesium salts (see column 6, line 54 to column 7, line 15), which embraces the subject matter of instant Claims 9-14.

One of ordinary skill in this art would be motivated to combine the teaching of the Jonsson et al patent with the teaching of the Guiseley patent since both patents disclose carrageenan in the presence of food compositions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate into the carrageenan containing gelled food composition of the Jonsson et al patent a carrageenan having a viscosity of 5 to 10 mPa.s in view of the recognition in the art, as evidenced by the Guiseley patent, that carrageenan having such viscosity are effective in stabilizing food products.

Summary

6. Claims 1-28 are rejected; Claims 29-45 are withdrawn from consideration.

Examiner's Telephone Number, Fax Number, and Other Information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is 571-272-0660. The examiner can normally be reached on 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Everett White/

Examiner

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/Shaojia Anna Jiang, Ph.D./

Supervisory Patent Examiner, Art Unit 1623